

BAINTON MCCARTHY LLC
J. Joseph Bainton (JB-5934)
26 Broadway, Suite 2400
New York, NY 10004
(212) 480-3500
(212) 480-9557 (fax)

Attorneys for Plaintiff Desmond Fountain

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DESMOND FOUNTAIN,

Plaintiff,

- against -

BELROSE, INC.
d/b/a BELROSE GALLERIES,

Defendant.

08 Civ. 3285 (LAK) (THK)

**REQUEST FOR ENTRY OF
DEFAULT PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 55(a)**

-----X

Upon the annexed affidavit of J. Joseph Bainton, sworn to May 6, 2008, and pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, Plaintiff Desmond Fountain respectfully requests that the Clerk of this Court enter the Default of Defendant Belrose, Inc. d/b/a Belrose Galleries.

Dated: New York, New York
May 6, 2008

BAINTON MCCARTHY LLC

By: 

J. Joseph Bainton (JB-5934)

26 Broadway, Suite 2400
New York, NY 10004-1840
(212) 480-3500
(212) 480-9557 (fax)

Attorney for Plaintiff Desmond Fountain

BAINTON MCCARTHY LLC
J. Joseph Bainton (JB-5934)
26 Broadway, Suite 2400
New York, NY 10004
(212) 480-3500
(212) 480-9557 (fax)

Attorneys for Plaintiff Desmond Fountain

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DESMOND FOUNTAIN,

Plaintiff,

- against -

BELROSE, INC.
d/b/a BELROSE GALLERIES,

Defendant.

08 Civ. 3285 (LAK) (THK)

**AFFIDAVIT IN SUPPORT OF
REQUEST FOR ENTRY OF
DEFAULT PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 55(a)**

-----X

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

J. JOSEPH BAINTON, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and the firm of Bainton McCarthy LLC, attorneys for Plaintiff Desmond Fountain ("Fountain").

2. I make this affidavit based upon my personal knowledge in support of Fountain's Request pursuant to Rule 55(a) of the Federal Rules of Civil Procedure ("Rule 55"), that the Clerk of the Court enter the Default of Defendant Belrose, Inc. ("Belrose").

3. Belrose is a corporation organized under the laws of a state of the United States and maintains a place of business in Atlantic City, New Jersey.

4. This action was commenced on April 1, 2008, by the filing of the Complaint.
(Docket No.: 1). Copies of Summons and the Complaint were personally served on April 7,

2008, on Belrose at its place of business located at 1505 Boardwalk, Atlantic City, New Jersey 08401. Proof of such service was filed with this Court on April 11, 2008. (Docket No.: 2).

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

6. This Court has personal jurisdiction pursuant to CPLR 301 and 302 over Belrose based upon, among other things, internet sales to New York residents. *See Pearson Education, Inc. v. Yi Shi d/b/a CollegeSolutions*, 525 F. Supp. 2d 551 (S.D.N.Y. 2007).

7. Fountain's Complaint seeks affirmative relief against Belrose.

8. Pursuant to Federal Rule of Civil Procedure 12(a)(1)(A)(i), Belrose had 20 days from the date of service to serve a responsive pleading.

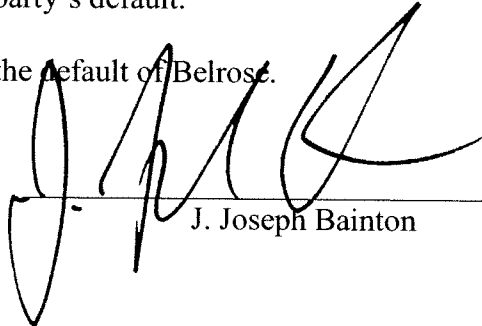
9. Accordingly, Belrose's deadline for serving a responsive pleading was Monday, April 28, 2008.

10. Belrose has not answered or otherwise responded to the Complaint and the time for it to do so has expired.

11. Rule 55 states:

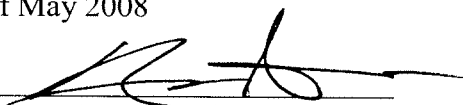
When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

12. Accordingly, the Clerk **must** enter the default of Belrose.



J. Joseph Bainton

Sworn to before me this 6th
day of May 2008



Notary Public

DEANA D. AHN
Notary Public, State Of New York
No. 02AH6075709
Qualified In New York County
Commission Expires ~~June 10, 2010~~
July 24, 2010

BAINTON MCCARTHY LLC
J. Joseph Bainton (JB-5934)
26 Broadway, Suite 2400
New York, NY 10004
(212) 480-3500
(212) 480-9557 (fax)

Attorneys for Plaintiff Desmond Fountain

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DESMOND FOUNTAIN,

Plaintiff,

08 Civ. 3285 (LAK) (THK)

CLERK'S CERTIFICATE

- against -

BELROSE, INC.
d/b/a BELROSE GALLERIES,

Defendant.

-----X

I, J. MICHAEL McMAHON, Clerk of the United States District Court for the Southern District of New York, do hereby certify that this action commenced on April 1, 2008 with the filing of a summons and complaint, a copy of the summons and complaint was served on defendant on April 7, 2008 by serving Charles Issacc, Managing Agent by hand delivery at 1505 Boardwalk, Atlantic City, New Jersey, and proof of such service thereof was filed on April 11, 2008.

I further certify that the docket entries indicate that the defendant has not filed an answer or otherwise moved with respect to the complaint herein. The default of the defendant Belrose, Inc. is hereby noted.

Dated: New York, New York
May 7, 2008

J. MICHAEL McMAHON
Clerk of the Court

By: 
Deputy Clerk